

REMARKS

Claims 29-44 were pending in the present application. Claims 37-44 were withdrawn from consideration. By virtue of this response, claim 32 has been cancelled, claims 29, 30, and 33 have been amended, and new claims 45-50 have been added. Accordingly, claims 29-31, 33-36, and 45-50 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

Rejections under 37 USC § 112

Claims 32 and 33 are rejected under 37 USC § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, claim 32 has been canceled rendering the rejection moot with respect to this claim and claim 33 has been amended to change the dependency from claim 32 to 29. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejections under 37 USC § 112, second paragraph.

Rejections under 37 USC § 102(e)

Claims 29-31 and 34-36 are rejected under 37 USC § 102(e) as allegedly being anticipated by Mault (US 6,478,736).

Independent claim 29 has been amended to recite “a non-invasive glucose monitor device”. On the other hand, Mault shows and describes an indirect calorimeter which is used to measure the resting metabolic rate (RMR) of a person at intervals. (Mault, 4: 46-48.) Mault’s device “measures a variety of factors and calculates one or more respiratory parameters, such as oxygen consumption and metabolic rate” which “is determined from the net oxygen consumption.” (Mault, 5: 2-4 & 34-36.)

Mault clearly fails to show or describe any non-invasive glucose monitor device and therefore cannot anticipate the recited claim 29. Dependent claims 31, 34-36, and new claims 45-49, which depend ultimately from claim 29, are patentable for at least the same

reasons. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejections under 37 USC § 102(e).

Rejections under 37 USC § 103(a)

Claims 29, 30 and 34-36 are rejected under 37 USC § 103(a) as allegedly being unpatentable over Heinonen et al. (US 5,840,020) in view of Heinonen et al (US 5,772,586).

Furthermore, claims 32 and 33 are rejected under 37 USC § 103(a) as allegedly being unpatentable over Heinonen '020 and Heinonen '586 as applied to claim 29 above, and further in view of Rosenthal (US 5,068,536).

In response, independent claim 29 has been amended to recite a non-invasive glucose monitor device "having an analyte measurement generator that calculates blood glucose levels obtained from a skin surface of the patient."

Neither Heinonen '020 nor '586 teach a glucose monitor device which calculates blood glucose levels obtained *from the patient's skin surface*. As described in the Office Action, Heinonen '020 and '586 "teaches that data related to a subject's glucose level is supplied from the subject's device to the data processing system for incorporation in the mathematical model, but do not teach particular details of the non-invasive glucose measurement system. Rosenthal teaches a non-invasive glucose sensor that performs measurements *through* a subject's finger" (Emphasis added, Office Action, p. 4, para. 9.)

As described in the specification and further in 09/547,433 (US 6,424,851), which was incorporated by reference, the non-invasive glucose monitor device is coupled to an analyte measurement generator which calculate the blood glucose level present on a user's skin that is placed against the device (Specification, p. 6, lines 13-17) as opposed to detecting infrared energy transmitted through a patient's body (Rosenthal, 5: 2-7 & Fig. 2).

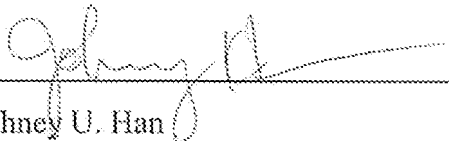
Therefore, Heinonen '020, Heinonen'586, and Rosenthal, either alone or in combination, fail to teach the features of amended claim 29. Dependent claim 32 has been canceled rendering the rejection moot with respect to this claim and dependent claims 30 and 33-36 and new claims 45-50 all depend ultimately from claim 29 and are patentable for at least the same reasons. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejections under 37 USC § 103(a).

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. VVMDNZ00201. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



Johny U. Han
Registration No. 45,565

Customer No. 40518
Levine Bagade Han LLP
2483 East Bayshore Road, Suite 100
Palo Alto, CA 94303
Direct: (650) 242-4217
Fax: (650) 284-2180